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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF ARIZONA

Jeffrey Michael Pataky, an individual

Plaintiff,

Case No. CV09-534-PHX

COMPLAINT

-VS-

City of Phoenix, a political subdivision
of the State of Arizona; **Phillip B.**
Gordon and Jane Doe Gordon,
husband and wife;
Frank Fairbanks and Jane Doe
Fairbanks, husband and wife; **Jack**
Harris and Jane Doe Harris, husband
and wife; **Anthony Brokaw and Jane**
Doe Brokaw, husband and wife; **George**
J. Richards and Jane Doe Richards,
husband and wife; **Brandon Huntley**
and Jane Doe Huntley, husband and
wife; **Sandra Renteria and John Doe**
Renteria; husband and wife; **Louie**
Tovar and Jane Doe Tovar, husband
and wife; **George Fulton and Jane Doe**
Fulton, husband and wife; **John and**
Jane Does I-X;

Defendants.

1 Plaintiff, JEFFREY MICHAEL PATAKY, by and through his counsel
2 undersigned, hereby alleges as follows for his Complaint against Defendants:

3 **PARTIES AND JURISDICTION**

4 1. Plaintiff, JEFFREY MICHAEL PATAKY (“Mr. Pataky”), is, at all
5 times relevant, a resident of Maricopa County, Arizona.

6 2. Defendant, CITY OF PHOENIX, is, at all times relevant, a political
7 subdivision of the State of Arizona, located in Maricopa County, Arizona.

8 3. Defendants, PHILLIP B. GORDON (“Mayor Gordon”) and JANE DOE
9 GORDON, are, at all times relevant, husband and wife residing in Maricopa County,
10 Arizona. Defendant Phillip Gordon holds the position of Mayor in and for the City of
11 Phoenix. All actions taken by Defendant Phillip Gordon were on behalf of the marital
12 community.
13

14 4. Defendants, FRANK FAIRBANKS (“Mr. Fairbanks”) and JANE DOE
15 FAIRBANKS, are, at all times relevant, husband and wife residing in Maricopa
16 County, Arizona. Defendant Frank Fairbanks holds the position of City Manager in
17 and for the City of Phoenix. All actions taken by Defendant Frank Fairbanks were on
18 behalf of the marital community.
19

20 5. Defendants, JACK HARRIS (“Chief Harris”) and JANE DOE HARRIS,
21 are, at all times relevant, husband and wife residing in Maricopa County, Arizona.
22 Defendant Jack Harris holds the position of Chief of Police in and for the City of
23 Phoenix. All actions taken by Defendant Jack Harris were on behalf of the marital
24 community.
25

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1 6. Defendants, ANTHONY BROKAW (“Detective Brokaw”) and JANE
2 DOE BROKAW, are, at all times relevant, husband and wife residing in Maricopa
3 County, Arizona. At all times relevant, Defendant Anthony Brokaw held the position
4 of detective in and for the City of Phoenix Police Department in the Family
5 Investigations Bureau. All actions taken by Defendant Anthony Brokaw were on
6 behalf of the marital community.
7

8 7. Defendants, GEORGE J. RICHARDS (“Commander Richards”) and
9 JANE DOE RICHARDS, are, at all times relevant, husband and wife residing in
10 Maricopa County, Arizona. At all times relevant, Defendant George J. Richards held
11 the position of Commander in and for the City of Phoenix Police Department in the
12 Professional Standards Bureau. All actions taken by Defendant George J. Richards
13 were on behalf of the marital community.
14

15 8. Defendants, BRANDON HUNTLEY (“Sergeant Huntley”) and JANE
16 DOE HUNTLEY, are, at all times relevant, husband and wife residing in Maricopa
17 County, Arizona. At all times relevant, Defendant Brandon Huntley held the position
18 of Sergeant in and for the City of Phoenix Police Department in the Family
19 Investigations Bureau. All actions taken by Defendant Brandon Huntley were on
20 behalf of the marital community.
21

22 9. Defendants, SANDRA RENTERIA (“Lt. Renteria”) and JOHN DOE
23 RENTERIA, are, at all times relevant, husband and wife residing in Maricopa County,
24 Arizona. At all times relevant, Defendant Sandra Renteria held the position of
25 Lieutenant in and for the City of Phoenix Police Department in the Family

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1 Investigations Bureau. All actions taken by Defendant Sandra Renteria were on
2 behalf of the marital community.

3 10. Defendants, LOUIE TOVAR (“Commander Tovar”) and JANE DOE
4 TOVAR, are, at all times relevant, husband and wife residing in Maricopa County,
5 Arizona. At all times relevant, Defendant Louie Tovar held the position of
6 Commander in and for the City of Phoenix Police Department in the Family
7 Investigations Bureau. All actions taken by Defendant Louie Tovar were on behalf of
8 the marital community.
9

10 11. Defendants, GEORGE FULTON (“Officer Fulton”) and JANE DOE
11 FULTON, are, at all times relevant, husband and wife residing in Maricopa County,
12 Arizona. At all times relevant, Defendant George Fulton held a position with the City
13 of Phoenix Police Department as a police officer. All actions taken by Defendant
14 George Fulton were on behalf of the marital community.
15

16 12. Defendants, JOHN and JANE DOES I-X, are, at all times relevant to
17 this Complaint, reside in Maricopa County, Arizona. Plaintiff will seek leave of the
18 Court to add their true names once their identity has become known.

19 13. Subject matter jurisdiction is proper pursuant to 28 U.S.C. § 1331.
20

21 14. Pursuant to 28 U.S.C. § 1391, venue is proper in this Court.

22 **GENERAL ALLEGATIONS**

23 15. Plaintiff incorporates each and every allegation set forth above as if fully
24 set forth herein.
25

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1 16. In or about early March 2007, Mr. Pataky's ex-wife, Julie Cioppa fka
2 Julie Pataky ("Ms. Cioppa"), contacted police and alleged that Mr. Pataky had
3 violated an order of protection entered on or about August 26, 2006.

4 17. Officer Paul Hubert of the City of Phoenix Police Department responded
5 to the call and filed an initial report under DR #2008-70443140.

6 18. Despite the fact that Ms. Cioppa was unable to provide any evidence
7 that Mr. Pataky was in violation of any court order, Officer Hubert listed Mr. Pataky
8 as a suspect rather than an investigative lead or person with information.

9 19. The matter was later assigned to Detective Brokaw.

10 20. On or about April 11, 2007, Detective Brokaw contacted Ms. Cioppa by
11 telephone. Ms. Cioppa indicated that Mr. Pataky was in violation of the August 26,
12 2006 order of protection because Mr. Pataky was elected to the board of the
13 neighborhood's homeowner's association even though Mr. Pataky did not live in the
14 family residence. Ms. Cioppa also alleged that Mr. Pataky had been making more
15 telephone calls to Ms. Cioppa than were allowed under the court order.

16 21. Following this conversation with Ms. Cioppa, Detective Brokaw
17 attempted to contact Mr. Pataky regarding Ms. Cioppa's allegations.

18 22. Detective Brokaw left a message for Mr. Pataky and stated that Mr.
19 Pataky was prevented from being a member of the neighborhood homeowners'
20 association, driving around his old neighborhood, and could not attend the same
21 church as his wife because of the order of protection.

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1 23. Mr. Pataky was also informed by Detective Brokaw that Detective
2 Brokaw would arrest him on the spot if he was found at any of these places.

3 24. On or about April 26, 2007, Detective Brokaw entered a supplement to
4 the police report indicated that no witness existed "to show SP1 Jeffrey is violating the
5 order of protection." Detective Brokaw also noted that "no evidence existed to show a
6 violation occurred."
7

8 25. Sometime in late April of 2007, Mr. Pataky received a copy of the
9 above-referenced police report. Upon review, Mr. Pataky observed that he was being
10 listed as a suspect even though the investigating officer had no evidence that a
11 violation had occurred.

12 26. After viewing the report, Mr. Pataky first left messages for Detective
13 Brokaw and after none of them were returned, contacted Detective Brokaw's
14 supervisor, Sergeant Huntley.
15

16 27. Mr. Pataky requested that, since no evidence existed regarding the
17 allegations made by Ms. Cioppa, he no longer be listed as a suspect in a domestic
18 violence case, but rather as an investigative lead.

19 28. Mr. Pataky indicated that the report was just Ms. Cioppa's attempt to
20 harass him and to gain an upper hand in the divorce and custody proceedings pending
21 before the family court.
22

23 29. Mr. Pataky also indicated that the listing of Mr. Pataky as a suspect
24 would cause problems with his employment. Sergeant Huntley simply screamed get
25 over it; it was not going to change.

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1 30. After receiving a less than positive response from Sergeant Huntley, Mr.
2 Pataky then contacted Lt. Renteria. Again, Mr. Pataky did not receive a positive
3 response to his request to be listed as an investigative lead.

4 31. Upon information and belief, on or about May 4, 2007, Detective
5 Brokaw traveled to the home of Ms. Cioppa. Ms. Cioppa provided a micro cassette
6 recording allegedly documenting Mr. Pataky's violations of the order of protection.
7 Ms. Cioppa also provided a three page listing of telephone calls. Detective Brokaw
8 identified the list of numbers as potentially being "phone records but they do not have
9 a company logo or any other service indicators identifying the provider/company."

10 32. On or about May 8, 2007, Mr. Pataky was contacted by Officer Gregory
11 Westover for the purpose of conducting an interview. During this interview, Mr.
12 Pataky indicated that he intended to file a Complaint with Commander Tovar
13 regarding the actions of Detective Brokaw and Sergeant Huntley in the investigation
14 of the allegations and the listing of Mr. Pataky as a suspect.

15 33. On or about May 9, 2007, Detective Brokaw received into evidence an
16 envelope from Ms. Cioppa which included a Cox Communications CD containing Ms.
17 Cioppa's home telephone records, a paper copy of Ms. Cioppa's version telephone
18 records and note from Ms. Cioppa.

19 34. In or about late early June of 2007, Mr. Pataky contacted Commander
20 Tovar with the City of Phoenix Police Department. Commander Tovar was then head
21 of the Family Investigations Bureau.

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1 35. On June 10, 2007, Commander Tovar left a voicemail message for Mr.
2 Pataky. After leaving the message, Commander Tovar failed to hang-up the telephone
3 but continued a conversation with Lt. Renteria and Sergeant Huntley. In the
4 conversation, Commander Tovar referred to Mr. Pataky as a “Dickweed.”
5 Commander Tovar also stated that “it is the fucking nature of the game” with
6 constituents like Mr. Pataky, that “[Commander Tovar] needed to keep [Mr. Pataky]
7 from going to Jack Harris,” and “get [Mr. Pataky] off their ass.” Commander Tovar
8 could also be heard stating, “I am not saying do it now,” before he hung up the
9 telephone.
10

11 36. The following day, Detective Brokaw requested a subpoena from the
12 Grand Jury of Maricopa County, to obtain copies of the telephone records for Ms.
13 Cioppa’s Cox Communications accounts.
14

15 37. Upon information and belief, Detective Brokaw faxed the subpoena to
16 Cox Communications on June 11, 2007 and received a Fed-Ex Envelope containing a
17 certified copy of Ms. Cioppa’s telephone records.

18 38. Upon information and belief, on or about July 6, 2007, Detective
19 Brokaw reviewed the Cox Communication and alleged Verizon records provided by
20 Ms. Cioppa rather than certified copies provided by Cox Communications.
21

22 39. Upon information and belief, Detective Brokaw failed to compare the
23 certified records with those provided by Ms. Cioppa, or if he did review the certified
24 record, Detective Brokaw concealed the discrepancies between the two sets of
25 documents.

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1 40. Upon information and belief, after reviewing the records provided by
2 Ms. Cioppa, Detective Brokaw listed 33 separate violations of the August 26, 2006
3 order of protection.

4 41. At trial, on or about May 9, 2008, Ms. Cioppa later testified that the
5 records she produced came directly from Cox Communication in spite of the fact that
6 Cox Communication only produces certified records in response to a subpoena.
7

8 42. On or about July 11, 2007, Detective Brokaw referred the matter to the
9 Maricopa County Attorney's Office for issuance of a Complaint and Summons against
10 Mr. Pataky for Aggravated Harassment.

11 43. On August 27, 2007, Mr. Pataky's criminal attorney, Kerrie Droban sent
12 correspondence to Chief Harris, Frank Fairbanks and Phil Gordon requesting an
13 investigation be performed into the Family Investigations Bureau's handling of Mr.
14 Pataky's matter and the actions of Detective Brokaw in threatening Mr. Pataky even
15 when Detective Brokaw believed there was no substance to Ms. Cioppa's claims
16 against Mr. Pataky.
17

18 44. Shortly thereafter, a direct complaint was issued on September 7, 2007.

19 45. On November 5, 2007, Officer Fulton appeared before the Maricopa
20 County Grand Jury and provided testimony regarding Detective Brokaw's
21 investigation.
22

23 46. Upon information and belief, Officer Fulton's testimony was predicated
24 on Detective Brokaw's reports.
25

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1 47. As a result of this testimony, a Supervening Indictment was issued on
2 November 5, 2007 for Aggravated Harassment, a class 6 felony and domestic violence
3 offense.

4 48. On or about November 6, 2007, Ms. Droban received correspondence
5 from Commander Richards with the Professional Standards Bureau. In this letter
6 Commander Richards indicated that the investigation by the Family Investigations
7 Bureau was completed in accordance with departmental policy and within established
8 investigative guidelines and that no misconduct occurred.

9 49. On or about February 26, 2008, Ms. Droban sent follow-up
10 correspondence to Chief Harris, Mayor Gordon, and Mr. Fairbanks requesting “any
11 notes, memoranda, transcripts and/or other indicia of investigation that substantiates
12 the department’s decisions to take no disciplinary action against Detective Brokaw for
13 his unprofessional conduct.”

14 50. In response, Ms. Droban received a two page e-mail string from Lt.
15 Renteria to Commander Richards.

16 51. The e-mail failed to address the concerns presented by Ms. Droban to
17 the Professional Standards Bureau, but rather, was evidence that no investigation
18 occurred.

19 52. On or about May 9, 2008, Mr. Pataky’s matter proceeded to a bench trial
20 before the Honorable Michael Kemp.

21 53. During the trial it became evident that the evidence supplied to the
22 prosecutor’s office by Detective Brokaw in support of the allegations was false.
23
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25

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54. Two separate copies of telephone records were introduced. One copy, relied on by the State in presenting evidence to the grand jury to secure the indictment, and a second copy, which reflected the certified records received in response to the grand jury subpoena. The certified copy did not contain a record of the alleged telephone calls set forth in Detective Brokaw's report and presented to the grand jury.

55. The State moved to dismiss the case with prejudice and the matter was dismissed by the Honorable Michael Kemp with prejudice.

56. Plaintiff requests a jury trial in this matter.

COUNT ONE
VIOLATION OF 42 U.S.C. § 1983-MALICIOUS PROSECUTION

57. Plaintiff incorporates each and every allegation above as it fully set forth herein.

58. The Defendants are individuals, entities and municipalities acting under color of state law.

59. The Defendants, individually and collectively, contributed to the presentation of false and fraudulent evidence and testimony to the Maricopa County Grand Jury, on or about November 5, 2007.

60. The presentation of said evidence led to the issuance of a Grand Jury Indictment against Mr. Pataky.

61. By participating in the investigation and presentation of false evidence to the Grand Jury, the Defendants deprived Mr. Pataky of his substantive due process

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1 rights to a fair and impartial presentation of evidence for determination of probable
2 cause.

3 62. In doing so, the Defendants participated and assisted in the prosecution
4 of Mr. Pataky with malice and without probable cause and in doing so deprived Mr.
5 Pataky of his constitutional rights.
6

7 63. As a result of Defendants' conduct, Mr. Pataky incurred financial,
8 economic, emotional and other damages in an amount to be proven at trial.

9 64. The actions of the Defendants were entered into with an evil mind and
10 therefore, punitive damages are appropriate.

11 **COUNT TWO**
12 **MALICIOUS PROSECUTION**

13 65. The Plaintiff incorporates each and every allegation set forth above as if
14 more fully set forth herein.

15 66. The Defendants, by conduct, participation or knowledge, initiated or
16 help institute a criminal prosecution against Mr. Pataky.
17

18 67. The criminal prosecution terminated in Mr. Pataky's favor when the
19 State voluntarily dismissed the matter during the first day of trial. The State
20 determined during the course of testimony that the evidence provided to the State by
21 Defendants and later presented to the Grand Jury was fraudulent.

22 68. The trial court dismissed the criminal prosecution with prejudice.

23 69. Each of the Defendants contributed to the investigation and prosecution
24 of Mr. Pataky in some way.
25

1 70. Each and every Defendant's actions were with malice and lacked
2 probable cause.

3 71. As a result of Defendants' actions, Mr. Pataky suffered significant
4 financial, emotional, and personal injuries.

5
6 **COUNT THREE**
7 **GROSS NEGLIGENCE**

8 72. The plaintiff incorporates each and every allegation set forth above as
9 more fully set forth herein.

10 73. The Defendants, as entities and individuals charged with enforcement of
11 the laws and investigations of criminal acts, owed a duty to Mr. Pataky to conduct
12 their investigation into allegations of domestic violence committed by Mr. Pataky
13 pursuant to the applicable standard of care for law enforcement officers.

14 74. Defendants conduct deviated from the duty and standard of care required
15 of police officers by relying on false or fraudulent documents to secure a grand jury
16 indictment against Mr. Pataky and the subsequent use of those documents as a basis
17 for criminal prosecution of Mr. Pataky.

18 75. Upon information and belief, Defendants had in there possession,
19 certified copies of telephone records from the alleged victim's service providers,
20 however, Defendants failed to verify the truth or falsity of documents provided by the
21 alleged victim.

22 76. By purposefully submitting fraudulent documents to the County
23 Attorney and in some instances, testifying regarding those documents before the
24
25

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1 Grand Jury, Defendants deviated from their duty and standard of care established by
2 the United States and Arizona Constitutions and the Arizona Rules of Criminal
3 Procedure.

4 77. As a result of Defendants' conduct, Mr. Pataky has been incurred
5 damages in an amount to be proven at trial.
6

7 **COUNT FOUR**
8 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

9 78. Plaintiff incorporates each and every allegation set forth above as if fully
10 set forth herein.

11 79. Defendants intentional use of false and fraudulent evidence and
12 testimony to obtain a Grand Jury Indictment against Mr. Pataky rises to the level of
13 "extreme and outrageous" conduct as to warrant recovery on the basis of intentional
14 infliction of emotional distress.

15 80. Defendants knew or had reason to know that the evidence presented to
16 the grand jury was fraudulent yet, despite this fact, they intentionally and recklessly
17 used the false evidence to obtain a Grand Jury Indictment.
18

19 81. As a direct and proximate result of Defendants actions, Mr. Pataky
20 suffered severe emotional distress.

21 **COUNT FIVE**
22 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

23 82. Plaintiff incorporates each and every allegation set forth above as if fully
24 set forth herein.
25

1 83. Defendants collection and use of false and fraudulent evidence and
2 testimony to obtain a Grand Jury Indictment against Mr. Pataky subjected Mr. Pataky
3 to an unreasonable risk of harm.

4 84. As a direct and proximate result of Defendants' actions, Mr. Pataky
5 suffered severe emotional and physical distress. Further, Mr. Pataky continues to
6 experience mental pain and suffering.

7
8 **COUNT SIX**
9 **DEFAMATION OF CHARACTER**

10 85. Plaintiff incorporates each and every allegation set forth above as if fully
11 set forth herein.

12 86. Defendants published and rendered various written statements
13 concerning Mr. Pataky, his propensity to commit a domestic violence offense, veracity
14 and professional and personal character.

15 87. Material defamatory of the personal, professional, business reputation
16 and capabilities of Mr. Pataky was and is contained in the police report and grand jury
17 testimony. Such statements were contrary to the truth and contrary to the information
18 available to Defendants prior to submitting and publishing the police report and
19 testimony before the grand jury.

20
21 88. The false, defamatory, and misleading statements made by and on behalf
22 of Defendants concerning the reputation and personal character of Mr. Pataky, were
23 made maliciously and with intent to injure and damage Mr. Pataky. The statements
24 concerning Mr. Pataky are wholly false and were not protected expressions of opinion.
25

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1 89. As a direct and proximate result of the conduct of Defendants, Mr.
2 Pataky has been hampered in his pursuit of employment and has been and will be
3 permanently and irretrievably damaged in his professional career. Mr. Pataky has
4 suffered and will continue to suffer a permanent impairment of his capacity to earn a
5 living. In the future, Mr. Pataky will be barred and prevented from securing
6 comparable employment and therefore, will sustain a loss of future income in amounts
7 that cannot presently be determined. Such full amount will be determined at trial.
8

9 90. As a further direct and proximate result of the conduct by Defendants,
10 including publication of false, misleading, and defamatory statements, Mr. Pataky has
11 suffered and in the future will continue to suffer serious and irreparable personal
12 inconvenience, mental anguish and distress. Such full amount will be determined at
13 trial.
14

15 **WHEREFORE**, Plaintiff prays for Judgment against Defendants, and each of
16 them, as follows:

17 A. For compensatory damages, plus special and incidental damages in such
18 a sum as may be proven at trial;

19 B. For punitive damages in an amount to be proven at trial;

20 C. For costs for the suit;

21 D. For attorney's fees; and
22
23
24
25

1 E. For other such relief as this Court deems just and proper.

2 **RESPECTFULLY SUBMITTED** this 16th day of March, 2009.

3 **LORONA, STEINER, DUCAR,**
4 **COUGHLIN & HOROWITZ, LTD.**

5 BY: /s/ Jess A. Lorona

6 Jess A. Lorona, Esq.
7 Gregory E. McClure, Esq.
8 Attorneys for Plaintiff
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